

March 10, 2003

Client No.: 1059

Via Facsimile 202-514-6381 & UPS

Mr. Jackson Nichols
US Department of Justice
Anti-Trust Department
1401 "H" Street NW, Suite 8000
Washington, DC 20530

Re: FCC COMMENTS OF NORTH COUNTY COMMUNICATIONS CORPORATION

DA 02-3511: APPLICATIONS BY VERIZON MARYLAND, INC., VERIZON WASHINGTON, DC, INC., AND VERIZON WEST VIRGINIA, INC. ET LA. FOR AUTHORIZATION UNDER SECTION 271 OF THE COMMUNICATIONS ACT TO PROVIDE IN REGION INTERLATA SERVICE IN MARYLAND, WASHINGTON DC AND WEST VIRGINIA

W.C. DOCKET NO.: 02-384

Dear Mr. Nichols:

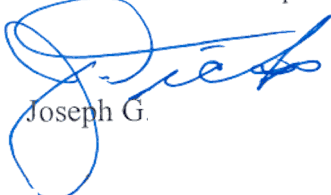
North County Communications continues to run up against Verizon's unfair business practices in California, Oregon and New York. Enclosed you will find some additional e-mails exemplifying what we have been up against. Especially with respect to New York, we find that North County has been misled with respect to the stated availability of requested facilities. When a competitor asks for interconnection, they are told there will be a minimum 6 month wait while facilities are built. When a retail customer asks for the same interconnection, turn-up is accomplished within 30 days.

We ask again that this issue be closely examined before Verizon's remaining 271 requests are ruled upon. After approval, there will be no remaining motivation for Verizon to cooperate with any entity seeking to enter one of its markets.

Please do not hesitate to contact me should you have any questions.

Very truly yours,

Law Offices of Joseph G. Dicks, APC



Joseph G.

From Todd Lesser <todd@nccom.com>**Wed, 19 Feb 2003 14:47:57 -0800****Page****1****From todd@nccom.com Wed Feb 19 14:47:58 2003****From:** Todd Lesser <todd@nccom.com>**To:** "Dianne M. Mckernan" <dianne.m.mckernan@verizon.com>**Cc:** steven.h.hartmann@verizon.com, donald.e.albert@verizon.com,
leigh.a.hyer@verizon.com, joseph.dimarino@verizon.com,
lionel.lyons@verizon.com, dorothy.m.sapp@verizon.com,
cynthia.b.robinson@verizon.com, manpreet.s.matharu@verizon.com,
donna.l.walker@verizon.com, pamelaj.cunningham@verizon.com,
evon.tabron@verizon.com, emory.a.brown@verizon.com,
thomas.m.wall@verizon.com, timothy.d.hall@verizon.com,
Joe Dicks <jdicks@jgdllaw.com>, shawn.young@wsj.com,
romeros@nytimes.com**Subject:** California**Date:** Wed, 19 Feb 2003 14:47:57 -0800

On January 9th 2003, I sent an e-mail to you stating that Verizon is not complying with interconnection agreement and I requested that Verizon appoints someone to the, "Inter-Company Review Board" so this matter would be resolved without unnecessary costly litigation.

Verizon has not been compensating North County Communications for toll traffic nor local traffic as required under the agreement. In addition, Verizon has refused to perform traffic studies.

On January 10, 2003 you told me that the contact information in the interconnection agreement was incorrect and the I should submit the disput in writing via mail and fax or e-mail to: Director-Contract Performance & Administration Verizon Wholesale Markets 600 Hidden Ridge HQEWMNOTICES Irving, TX 75038 Telephone Number: 972-718-5988 Facsimile Number: 972-719-1519 Internet Address: wmnotices@verizon.com.

On January 10, 2003 I faxed the dispute, sent an e-mail, and mailed a hard copy of the dispute.

It has now been forty days and Verizon did not even give me the courtesy of a response.

Once again, with this passive aggressive antitrust behavior, Verizon is forcing me to take legal actions. The intent of the interconnection agreement is to resolve disputes and for there to be competition as required in the Telecom Act. It is apparent that since Verizon has the authority to provide long distance in California they don't have to act on their best behavior. I assume I will soon be able to expect this exact same behavior in the West Virginia and Maryland if the FCC approves Verizon for long distance in those jurisdictions. As planned and calculated, Verizon has cleared a path for continued abuse of its monopoly status by preventing CLEC's from fairly competing with them.

Don't expect North County to sit idle without a fight.

I have referred this matter to my attorney to request arbitration.

--

Todd Lesser

Voice: +1 619 364 4750

Fax: +1 619 364 4777

E-Mail: todd@nccom.com

California

From Todd Lesser <todd@nccom.com>**Wed, 19 Feb 2003 14:45:24 -0800****Page****1****From todd@nccom.com Wed Feb 19 14:45:24 2003****From: Todd Lesser <todd@nccom.com>****To: "Dianne M. McKernan" <dianne.m.mckernan@verizon.com>****Cc: steven.h.hartmann@verizon.com, donald.e.albert@verizon.com,
leigh.a.hyer@verizon.com, joseph.dimarino@verizon.com,
lionel.lyons@verizon.com, dorothy.m.sapp@verizon.com,
cynthia.b.robinson@verizon.com, manpreet.s.matharu@verizon.com,
donna.l.walker@verizon.com, pamela.j.cunningham@verizon.com,
evon.tabron@verizon.com, emory.a.brown@verizon.com,
thomas.m.wall@verizon.com, timothy.d.hall@verizon.com,
Joe Dicks <jdicks@jgdilaw.com>, shawn.young@wsj.com,
romeros@nytimes.com****Subject: New York****Date: Wed, 19 Feb 2003 14:45:24 -0800**

On November 7th, 2002, you sent me an e-mail that said

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As I stated in

2001, Verizon would be able to provide Interconnection trunks to that location without requiring an entrance build, if you provide us with a LOA for dedicated facilities from your carrier of choice. I researched the CLLI code you previously provided [NYCMNYWHW11] and found that it is associated with the CLLI code of NYCMNYWHW02. This code is a Wholesale facility for Wiltel. There is no capacity for additional T3s on this facility..."

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I responded back on the November 8th and I purposely CC'd the following people:

<steven.h.hartmann@verizon.com>
<donald.e.albert@verizon.com>
<leigh.a.hyer@verizon.com>
<joseph.dimarino@verizon.com>
<lionel.lyons@verizon.com>
<dorothy.m.sapp@verizon.com>
<cynthia.b.robinson@verizon.com>
<jimmy.m.born@verizon.com>
<manpreet.s.matharu@verizon.com>
<donna.l.walker@verizon.com>
<pamela.j.cunningham@verizon.com>
<evon.tabron@verizon.com>
<emory.a.brown@verizon.com>
<thomas.m.wall@verizon.com>
<timothy.d.hall@verizon.com>

The e-mail stated:

--
Correct me if I am wrong. What you are saying is that after your extensive search of all of Verizon's records, a search of the Telecordia CLLI database, and even a site survey, that if a retail customer attempted to order a DS3 and have it installed at 1 Whitehall in Worldcom's office on the 7th floor in Rack 105.37, Verizon would not be able to provision this without a fiber build and/or installing a new additional mux.

New York

*From Todd Lesser <todd@nccom.com>**Wed, 19 Feb 2003 14:45:24 -0800**Page**2*

I had a feeling that Verizon was not be truthful so I decided to check for myself. Jartel Inc., another company I own, contacted Verizon retail and ordered a DS3 into One Whitehall and have it installed on the 7th floor in Rack 105.37.

I was told that not only was there enough space for my DS3, but the mux was only a third full.

Here is the order information:

Order#N1BK5629
System ID# 701/T3Z/NYCMNYWHN42/NYCMNY13K43
Circuit ID# 32HFGL608653
FOC 2/26/03

I am speechless! Do have any other explanation for this other than Verizon was being totally dishonest?

--

Todd Lesser
Voice: +1 619 364 4750 Fax +1 619 364 4777
E-Mail: todd@nccom.com

New York

From Todd Lesser <todd@nccom.com>**Fri, 14 Feb 2003 18:23:46 -0800****Page****1****From todd@nccom.com Fri Feb 14 18:23:46 2003****From:** Todd Lesser <todd@nccom.com>**To:** margaret.s.cole@verizon.com**Cc:** "Dianne M. McKernan" <dianne.m.mckernan@verizon.com>**Subject:** Oregon dispute**Date:** Fri, 14 Feb 2003 18:23:46 -0800

I am in receipt of your letter dated Friday, February 14, 2003 and e-mailed to me at 4:46 PM EST - minutes before the close of your business day. Shortly after receiving your e-mail, I called you attempting to talk with you. You were gone. If Verizon was truly acting in good faith, Verizon would devote the resources to negotiate this in a timely matter. While I have no doubt that you are, "Swamped" as you stated in your e-mail dated February 4th, we only have eighteen more days before arbitration. Making me wait nine days for a response is not acting in good faith. Verizon is a huge multi-billion dollar company. Clearly they have the resources to devote someone to resolve this issue who is not, "Swamped." Unless of course, Verizon is purposely waiting until the arbitration to disclose to North County its reasons for its position.

Verizon has not responded to the issues at hand. You stated that you are not qualified to respond to give me a word by word meaning of Section IV-6, "Either Party may deliver traffic destined to terminate at the other Party's end office via another LEC's tandem provided that the Parties have established compensation Agreement(s) specific to this arrangement." When you stated that you are not qualified to answer that question, I requested that Verizon appoint someone who is qualified to answer the question. Your new response is now to just ignore the issue at hand and just say that, "Perhaps the best we can do is agree to disagree." This is clearly not the, "Best" we can do or specifically handling this in, "Good faith" as required by the interconnection agreement. Making me wait until arbitration to find out exactly how Verizon reached this conclusion is not acting in, "Good faith." The obvious purpose of the provision requiring the parties to appoint a, "Knowledgeable, responsible representative" is to maximize the opportunity to avoid an expensive arbitration. I am sorry that Verizon has put you in the awkward position of having to negotiate our differences when you obviously do not have the background, qualifications or time to devote to this matter. While it may not be your fault that you were put in this position, North County is stuck with the consequences. This is not a personal attack on you. We are in no position to resolve these differences and conclude this matter short of arbitration without someone on Verizon's end who can engage a meaningful discussion of ALL the issues that separate us. It is my very strong belief that if Verizon had wished to capitalize on the opportunity to avoid an arbitration, they could have done so simply by requiring that an appropriate representative with the appropriate authority to set forth Verizon's positions with support. Simply walking away from the problem, "Agreeing to disagree" only puts us in the position to arbitrate. As time goes on, it has become more and more apparent that this is exactly what Verizon wants.

Now let me address your requirements for reciprocal compensation as it applies to the FCC ISP order and Oregon PUC rules. You are obviously choosing to ignore the FCC rulings that the says that the State commission, "May adopt reciprocal compensation as an appropriate interim inter-carrier compensation mechanism" for ISP traffic. Verizon is also well aware of the Oregon Commission's position on requiring Verizon to pay reciprocal compensation on ISP traffic. Here are just a few of the cases:

Oregon dispute

From **Todd Lesser** <todd@nccom.com>

Fri, 14 Feb 2003 18:23:46 -0800

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<http://www.puc.state.or.us/orders/1999ords/arb91dec.pdf>
<http://www.puc.state.or.us/orders/1999ords/99%2D397.pdf>

Concerning Verizon's refusal to recognize the termination of Bill and Keep, Verizon should have, "Forwarded" this request to its attorney's attention in April of 2000. Having failed to do that, the e-mail should have been forwarded to Verizon's attorney's attention when I brought this e-mail to YOUR attention nine days ago. Why Verizon chose not to address North County's termination of Bill and Keep until now is nothing short of astonishing. This is a critical issue for North County and Verizon is approaching it with a cavalier attitude. If Verizon had any serious doubt that North County had validly terminated the Bill and Keep arrangement it would have brought it to North County's attention years ago. Verizon is paying other CLEC's for ISP traffic in Oregon. I am at a complete loss to explain why Verizon is singling out North County out for disparate treatment. I fear, however, that Verizon is attempting to cause North County financial harm to dissuade us from competing in the marketplace and punish North County for daring to bring to the attention of the Public Utilities Commissions and courts in other jurisdictions Verizon anti-competitive and illegal behavior and practices.

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Todd Lesser

Voice: +1 619 364 4750

Fax: +1 619 364 4777

E-Mail: todd@nccom.com

Oregon dispute

From Todd Lesser <todd@nccom.com>

Thu, 6 Feb 2003 09:27:48 -0800

Page

1

From todd@nccom.com Thu Feb 06 09:27:48 2003

From: Todd Lesser <todd@nccom.com>

To: margaret.s.cole@verizon.com

Cc: "Dianne M. McKernan" <dianne.m.mckernan@verizon.com>

Subject: Oregon Dispute

Date: Thu, 6 Feb 2003 09:27:48 -0800

I am in receipt of your e-mail dated February 5th 2003. I am not an attorney either, although, I feel qualified to negotiate with Verizon to settle this dispute as required under Section 12.2 of our agreement. If you feel that you are not sufficiently, "Knowledgeable" to be able to address the issues that have arisen concerning this agreement then I formally request that Verizon appoint a "Knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement." To appoint someone who is not capable to handle this is not acting in "Good faith" and is itself another breach of our agreement.

This agreement obviously does have legal questions that need to be answered. You and I both have the ability to go to our respective lawyers and ask questions. Unless Verizon has some ulterior motives, I see no reason why an e-mail to you after we spoke to confirm my understanding of what you said should be an issue.

Let's cut to the chase and talk about the issues at hand.

I have provided you with an e-mail dated April 17th, 2000 to Glenda Lowenstein in which North County requested a, "Traffic study" and to "Receive Compensation for the out of balance traffic."

There are three separate issues of compensation and I suggest we break them up.

First, compensation for traffic from the date the agreement became effective until April 17th 2000.

Second, compensation for traffic from the April 17th, 2000 until now.

Third, future compensation.

I will address the first issue. Section IV-6 #5 of the agreement allows for Indirect Network Interconnection. It specifically says, "Either Party may deliver traffic destined to terminate at the other Party's end office via another LEC's tandem provided that the Parties have established compensation Agreement(s) specific to this arrangement." This section has no restrictions on it. It doesn't require a traffic study. It doesn't say anything about having to give notice to end Bill and Keep.

You stated that in is your interpretation and your, "Attorney agrees with you" that this section is talking about facilities and not exchanging of calls. When I asked you explain your position and then tried to break down the sentence as a business person, you responded by saying you are not an attorney. This section is blantly clear. "Either Party." This means Verizon or North County. "May deliver traffic." This means, May deliver calls. You stated that this means circuits. You ignored the previous language in the agreement and specifically on the same page of the agreement. "Destined to terminate at the other Party's end office." This means that calls that go to North County's central office or to Verizon's central office and end up at a customer that is served by that central office. You stated that this part of the sentence is talking about calls

Oregon Dispute

From Todd Lesser <todd@nccom.com>**Thu, 6 Feb 2003 09:27:48 -0800****Page****2**

that "Terminate" at the central office and not calls that, "Terminate at the customer's location." This is a strained interpretation. Few if any calls normally terminate at an end office. If you take such a narrow interpretation, only calls that receive a telco recording, calls going to a telco telephone in the central office, or calls that terminate on a customer provided colocated piece of equipment. Is that what you are really saying? Your narrow interpretation is contrary to language in the agreement and reason. I can think of no reason why either party would have put in such a clause that would only apply to very few calls. This would mean that either party can terminate their traffic for free on the other parties network if it indirectly routes the calls as long as the calls aren't answered by someone or some equipment in the central office. "Via another LEC's tandem". In this case this means sending calls through Qwest's tandem. "Provided that the Parties have established compensation Agreement(s) specific to this arrangement." This means that Verizon should have established an agreement to compensate North County the minute it started indirectly sending calls to North County via Qwest's tandem.

Now let's address the second issue. There should now be no argument concerning calls from April 17th, 2000 until the present time. North County requested a traffic study and to be compensated for the out of balance traffic. Verizon didn't comply with the request. North County isn't sending Verizon any traffic so whether there is an imbalance of traffic or not is a simple question that Verizon should have answered immediately. If Verizon had simply complied with this provision and given North County the minutes that Verizon was indirectly routing to North County via Qwest, we could have simply used those minutes to bill Verizon. North County is willing to negotiate how to fairly calculate those minutes. Last time we spoke, you told me that Verizon has no way of calculating the minutes because most of the customers have flat rate service and therefore Verizon doesn't even record what local calls its customers make. I find it totally unbelievable that Verizon has no record of any calls. Does Verizon really expect North County to believe that when the FBI shows up and says that we are trying to find out if a customer made any calls to a specific number during a specific time period that Verizon tells them they can't do it? The police and the FBI pull past call records all the time. Even if Verizon still stands by this position, clearly the GTD5, ESS1, ESS1A, #5ESS, #4ESS and the DMS100 central office equipment all have the capability to record calls even if Verizon doesn't normally do it. Once North County requested a study to show how many calls Verizon was sending to North County, Verizon had an obligation under the agreement to comply. North County Communications negotiated in good faith. If Verizon truly didn't have the ability to do something, which I doubt, they should not have put it in the agreement or immediately notified North County of that fact.

As you stated in your January 30th e-mail, "Section 3.3 defines how the parties will compensate each other on an usage basis for the exchange of Local traffic irrespective of the type of interconnection (direct or indirect)." Therefore, North County expects to be paid. The only issue is how to determine the amounts of minutes so that Verizon can compensate North County.

Lastly, future compensation. Since North County requested a traffic study and to be paid for the out of balance traffic in 2000, it is entitled to "Receive compensation for Internet traffic minutes up to a ceiling equal to, on an annualized basis, the number of Internet minutes for which the CLEC (North County) was entitled to receive compensation during the first quarter of 2001, plus a 10% growth factor."

Oregon Dispute

From Todd Lesser <todd@nccom.com>**Thu, 6 Feb 2003 09:27:48 -0800****Page
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Now the only issue is to address the number of minutes. If Verizon wants to issue an ASR (Access Service Request) to order direct trunking to North County's central office and stop indirectly routing traffic so it is not so "Difficult" for Verizon to validate North County's bills, North County will accept the ASR and give an FOC (Firm Order Commitment) the same day it receives the ASR.

What really concerns North County is Verizon's failure to pay compensation due from April 2000 to the present when it admits that compensation is due. Remember, Verizon has recognized that whether directly or indirectly routed, the calls are compensable, and has also recognized that North County has properly requested a switch to reciprocal compensation from bill and keep. Non payment for calls for this period (as well as on going calls) and forcing North County to go to arbitration, with all its inherent delay and costs, is another attempt by Verizon to use its monopoly status and power in an anticompetitive manner, to keep North County out of the market. Verizon's failure to fairly compete in this and other markets is getting considerable attention in Maryland, West Virginia, Illinois and New York, to name a few. Our current dispute in Oregon has significant implications and ramifications far beyond a simple arbitration over amounts due North County. It has become abundantly clear that Verizon is using these tactics nationwide. Tell the powers that be that no matter hard they try, no matter what unfair tactics they take, North County will not give up its fight to be treated fairly as required under the telecom act.

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Todd Lesser

Voice: +1 619 364 4750

Fax +1 619 364 4777

E-Mail: todd@nccom.com

Oregon Dispute

*From margaret.s.cole@verizon.com**Fri, 14 Feb 2003 16:46:18 -0500*

Page

1

From: margaret.s.cole@verizon.com **Fri Feb 14 13:47:06 2003**
From: margaret.s.cole@verizon.com
To: "Todd Lesser" <todd@nccom.com>
Subject: Re: Oregon Dispute
Date: Fri, 14 Feb 2003 16:46:18 -0500

Todd,

I agree, we should cut to the chase and talk about the issues. I apologize if my earlier message left you with the impression that I had some kind of ulterior motive. My motivation is the same as yours - to comply with our interconnection agreement and the FCC's Internet Order and resolve our dispute. I just want you to understand that as a non-attorney, I cannot present all arguments and legal interpretations that may come forward in arbitration.

1. Agreement provisions that govern Reciprocal Compensation: Perhaps the best we can do is agree to disagree regarding our respective interpretations of Article IV, Sections 3.3, 4, and 5.

2. Compensation for Internet Traffic: Article IV, Section 3.3 addresses compensation, on a usage basis, for Local Traffic. Local Traffic is defined in Article II, Section 1.4 as "... traffic that is originated by an end user of one Party and terminates to the end user of the other Party within GTE's then current local serving area..." Therefore, under the terms of the interconnection agreement, Internet traffic is not Local Traffic and is not compensable under the terms of Article IV, Section 3.3. Assuming we exited Bill & Keep in 2000, the agreement does not call for compensation of Internet traffic. Therefore, under the terms of our agreement which incorporates the FCC's order, no compensation is due to NCC since there was no compensable base in first quarter of 2001. I believe your position is that reciprocal compensation is due for Internet traffic. If this is the case, then we are at impasse on this issue.

Please note that I disagree with several statements you have made. For example, you wrote, "[w]hat really concerns North County is Verizon's failure to pay compensation due from April 2000 to the present when it admits that compensation is due. Remember, Verizon has recognized that whether directly or indirectly routed, the calls are compensable, and has also recognized that North County has properly requested a switch to reciprocal compensation from bill and keep."

I have not agreed that compensation is due. What I have said (see 1/30/03 message from me to you) regarding compensation is that "Article IV, Section 3.3 addresses compensation, on a usage basis, for Local Traffic. Article IV, Sections 4 and 5 speak to the physical interconnection of the network and related facilities matters for direct interconnection (Section 4) and indirect interconnection (Section 5). Section 3.3 defines how the parties will compensate each other on an usage basis for the exchange of Local traffic irrespective of the type of interconnection (direct or indirect)." You have represented that the traffic in question is ISP-bound traffic. As detailed above, ISP-bound traffic is not Local Traffic and therefore not subject to Reciprocal Compensation.

On the issue of requesting to leave bill & keep, we have not agreed that you exited bill and keep as of April 2000. I am in receipt of your 2/5/03 message forwarding your support for a April 2000 exit and have forwarded it to my attorneys for their review. Please note that exiting bill and keep in 2001 would not have any impact on compensation for ISP traffic. The

Re: Oregon Dispute

From *margaret.s.cole@verizon.com***Fri, 14 Feb 2003 16:46:18 -0500****Page****2**

only purpose of a study is to begin compensation for Local Traffic not ISP traffic.

Sara Cole
703-974-4578

"Todd Lesser" <todd@nccom.com> on 02/06/2003 12:27:48 PM

To: MARGARET S. COLE/EMPL/VA/Bell-Atl@VZNotes
cc: DIANNE M. MCKERNAN/EMPL/NJ/Bell-Atl@VZNotes
Subject: Oregon Dispute

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Re: Oregon Dispute

From margaret.s.cole@verizon.com**Fri, 14 Feb 2003 16:46:18 -0500****Page****3**

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customer's location." This is a strained interpretation. Few if any calls normally terminate at an end office. If you take such a narrow interpretation, only calls that receive a telco recording, calls going to a telco telephone in the central office, or calls that terminate on a customer provided colocated piece of equipment. Is that what you are really

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Re: Oregon Dispute

From margaret.s.cole@verizon.com**Fri, 14 Feb 2003 16:46:18 -0500****Page****4**

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Lastly, future compensation. Since North County requested a traffic study and to be paid for the out of balance traffic in 2000, it is entitled to "Receive compensation for Internet traffic minutes up to a ceiling equal to, on an annualized basis, the number of Internet minutes for which the CLEC (North County) was entitled to receive compensation during the first quarter of 2001, plus a 10% growth factor."

Now the only issue is to address the number of minutes. If Verizon wants to issue an ASR (Access Service Request) to order direct trunking to North County's central office and stop indirectly routing traffic so it is not so "Difficult" for Verizon to validate North County's bills, North County will accept the ASR and give an FOC (Firm Order Commitment) the same day it receives the ASR.

What really concerns North County is Verizon's failure to pay compensation due from April 2000 to the present when it admits that compensation is due. Remember, Verizon has recognized that whether directly or indirectly routed, the calls are compensable, and has also recognized that North County has properly requested a switch to reciprocal compensation from bill and keep. Non payment for calls for this period (as well as on going calls) and forcing North County to go to arbitration, with all its inherent delay and costs, is another attempt by Verizon to use its monopoly status and power in an anticompetitive manner, to keep North County out of the market. Verizon's failure to fairly compete in this and other markets is getting considerable attention in Maryland, West Virginia, Illinois and New York, to name a few. Our current dispute in Oregon has significant implications and ramifications far beyond a simple arbitration over amounts due North County. It has become abundantly clear that Verizon is using these tactics nationwide. Tell the powers that be that no matter hard they try, no matter what unfair tactics they take, North County will not give up its fight to be treated fairly as required under the telecom act.

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Re: Oregon Dispute